

BERZON, Circuit Judge, concurring in the result:

**DEC 12 2005**

I agree that we should affirm the dismissal of the ten petitions for involuntary bankruptcy. I write separately because I do not believe it necessary to reach the question whether involuntary bankruptcy petitions can be dismissed on the ground that they were filed in bad faith.

All ten petitions were dismissed on the ground that the debtors were generally paying their debts as they became due. The bankruptcy court noted that nine of the ten petitions could also have been dismissed on the alternative ground that the petitions were filed in bad faith. Appellants do not challenge the determination that the petitions were properly dismissed because the debtors were generally paying their debts as they became due. I would therefore not reach the question of whether dismissal on bad faith grounds was appropriate. The bad faith question can and should be addressed in proceedings under 11 U.S.C. § 303(i)(2), if raised.